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Via Email at delores@water.ca.gov

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Re: Comments on the Notice of Preparation for the EIS/EIR for the Bay Delta Conservation Plan

Dear Ms. Brown:

The Central Delta Water Agency and South Delta Water Agency previously submitted comments on the *federal* "Notice of Intent" to prepare an EIS/EIR for the BDCP on March 24, 2008. Since such comments relate to the same topic at issue herein, those comments are hereby incorporated by reference and enclosed herewith. We hereby take the opportunity to supplement those comments with the following.

1. **The Feasibility of "the Project" Has Not Yet Been Demonstrated and Must be Demonstrated *Prior to* the Initiation of the CEQA Process.**

CEQA at least implicitly, if not explicitly, assumes that the "project" which is subjected to environmental analysis under CEQA is a project that is feasible. Guidelines section 15364 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors."

CEQA is not meant to be the process to determine whether the proposed project is feasible. (CEQA *is*, however, an appropriate process to evaluate whether *alternatives* to the project are feasible.) Thus, before the CEQA process ever begins the project must be fairly determined to be feasible. This is especially important since EIS/EIRs are inevitably biased towards justifying why the project should be carried out and why all the alternatives to the project are not feasible and should be rejected. Moreover, it would involve a colossal waste of the resources of all of the public responsible and trustee agencies as well as the general public

and stakeholders to embark on the CEQA process with a project that, from the get-go, has not been proven to be fesible, i.e., "capable of being accomplished in a successful manner within a reasonable period of time . . . ." (Guidelines, § 15364.)

While as discussed below the project at issue has not yet been defined, and, as a result, this entire Notice of Preparation and Scoping Process is legally inadequate and premature, it is clear that at the present time it would be unwarranted and unlawful for the ultimate project to include any form of an isolated conveyance facility. In its "Vision for the California Delta," the Delta Vision's Blue Ribbon Task Force, which was specifically directed by the Governor to "develop a durable vision for sustainable management of the Delta" (Governor's Exec. Order No. S-17-06 (Sept. 28, 2006)), readily recognizes and concedes that the feasibility of any isolated conveyance to accomplish the purposes for which it is sought has not yet been demonstrated. For example, the Task Force explains:

> "One way to manage water exports is to create isolated facilities that take water around the Delta. *Perhaps* this would enhance the reliability of exports, create fewer problems for selected species, be less exposed to seismic risk, and result in higher water quality. *But at this point, there is not sufficient specific information to guarantee these outcomes.*
>
> Similarly, the concept of a "dual" conveyance, joining an isolated facility to improved conveyance through the Delta, *might* increase reliability and capture more high-water flows, but again, *not enough information is available at this point to ensure this.*" (Delta Vision, Blue Ribbon Task Force's "Our Vision for the California Delta," p. 13.)

Once the lead agencies for the BDCP EIS/EIR figure out and articulate what basic objectives they are trying to accomplish, then *before* the lead agencies develop the project which they believe is the preferred course of action (i.e., alternative) to accomplish those objectives, the lead agencies must ensure under CEQA, as well as the rule of good faith and fair dealing and other laws and principles, that whatever project they develop and bias the entire EIS/EIR process in favor of is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (Guidelines, § 15364.)

a. **An Isolated Conveyance Facility Is Not "Legally" Feasible.**

With regard to "legal" feasibility, two paramount questions regarding any form of an isolated facility include whether such a facility can be legally constructed and, if so, whether such a facility can be legally operated in a manner which successfully accomplishes the purposes for which it is constructed. Unless existing law is substantially overhauled the answer is "no" on both counts.

i. **Delta Protection Act of 1992.**

"The Legislature finds and declares that the Sacramento-San Joaquin Delta is a natural resource of statewide, national, and international significance, containing irreplaceable resources, and it is the policy of the state *to recognize, preserve, and protect those resources* of the delta for the use and enjoyment of current and future generations." (Pub. Resources Code, § 29701, emphasis added.)

"The Legislature further finds and declares that the basic goals of the state for the delta are the following:

(a) *Protect, maintain, and, where possible, enhance and restore* the overall quality of the delta environment, including, but not limited to, *agriculture, wildlife habitat, and recreational activities.*

. . .

(c) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety." (Pub. Resources Code, § 29702, emphasis added.)

"The Legislature further finds and declares as follows:

(a) The delta is an agricultural region of great value to the state and nation and *the retention and continued cultivation and production of fertile peatlands and prime soils are of significant value.*

(b) The agricultural land of the delta, while adding greatly to the economy of the state, also provides a significant value as open space and habitat for water fowl using the Pacific Flyway, as well as other wildlife, and the *continued dedication and retention of that delta land in agricultural production contributes to the preservation and enhancement of open space and habitat values.*

(c) *Agricultural lands located within the primary zone should be protected from the intrusion of nonagricultural uses.*" (Pub. Resources Code, § 29703, emphasis added.)

The construction of a huge isolated facility through the Delta will constitute a massive "intrusion of nonagricultural uses" by taking considerable acreage of agricultural land out of production, and, hence, result in the destruction of the associated economic, open space and habitat values associated therewith, which is squarely contrary to State's goal and policy to "recognize, preserve, and protect" such agricultural lands and values. (Pub. Resources Code, §§ 29703 & 29701, respectively.)

Similarly, with regard to the "operation" of an isolated facility, how is the diversion of substantial amounts of fresh water flows into such a facility consistent with the basic goal of the state to "*[p]rotect, maintain, and, where possible, enhance and restore the overall quality of the delta environment*, including, but not limited to, agriculture, wildlife habitat, and recreational activities"? (Pub. Resources Code, § 29702.) Clearly, it is not.

ii. **Water Code sections 12980 et seq.**

> "The Legislature finds and declares that the delta is endowed with many invaluable and unique resources and that *these resources are of major statewide significance*." (Wat. Code, § 12981, subd. (a), emphasis added.)
>
> "The Legislature further finds and declares that the delta's uniqueness is particularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that, in order to preserve the delta's invaluable resources, which include highly productive agriculture, recreational assets, fisheries, and wildlife environment, *the physical characteristics of the delta should be preserved essentially in their present form; . . .*" (Wat. Code, § 12981, subd. (b), emphasis added.)

Neither the construction of a huge isolated facility through the Delta, nor the diversion of fresh water inflows into such a facility, come anywhere near "preserv[ing]" "the physical characteristics of the delta . . . in their present form; . . . ." (*Ibid.*) Such construction and operation constitute an obvious and drastic alteration of the present physical characteristics of the Delta in direct contravention of the Legislature's finding and declaration in section 12981.

iii. **Delta Protection Act of 1959.**

> "The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, *and to provide a common source of fresh water for export to areas of water deficiency* is necessary to the peace, health, safety and welfare of the people of the State . . . ." (Wat. Code, § 12201, emphasis added.)

If water is exported at the northernmost tip of the Delta via an isolated facility, then such water is plainly *not* providing a "*common* source of fresh water for export," instead, it is providing an *isolated* source of fresh water for export which is entirely devoid of common benefits to essentially the entirety of the Delta and, hence, which is squarely contrary to section 12201 and "to the peace, health, safety and welfare of the people of the State."

Moreover, Water Code section 12205 provides:

"It is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates *shall be integrated to the maximum extent possible in order to permit the fulfillment of the objectives of this part.*" (Emphasis added.)

Since, as just noted, one of the "objectives of this part" is to "provide a *common* source of fresh water for export" (Wat. Code, § 12201), the Projects have a duty to integrate their releases from storage into the Delta "to the maximum extent" possible to provide that "common" source. Diverting any amount of such releases in an isolated canal, which by definition is entirely devoid of the required commonality of benefits, is obviously not providing the "common" source of fresh water to the maximum extent possible. Rather, it would be blatantly disregarding that mandate.

Water Code sections 12203 and 12204, respectively, provide:

"It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled."

"In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter."

Even assuming that the "common pool" mandate can somehow be disregarded, before one drop of water is placed in an isolated facility, there needs to be a comprehensive analysis regarding how many drops of water, and at what times of year, and during what hydrological and ecological situations, etc., can such drops of water be legally deemed to be surplus to what "users within [the] Delta are entitled" (Wat. Code, § 12203) and surplus to what is "necessary to meet the requirements of Sections 12202 and 12203 of this chapter." (Wat. Code, § 12204.) Once that amount of water is determined, then, and only then, can the economic and other feasibility considerations be fairly and meaningfully evaluated.

iv. **Watershed Protection Act.**

Water Code section 11460 provides:

"In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, *shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the*

beneficial needs of the watershed, area, or any of the inhabitants or property owners therein."

Similar to the discussion immediately above, in order to fairly and meaningfully evaluate the feasibility of an isolated facility, there needs to be a comprehensive determination of what amount of water, at what times of year, and under what hydrological and ecological situations, etc., is "reasonably required to adequately supply the [human and environmental and public trust, etc.] beneficial needs of the watershed, area, or any of the inhabitants or property owners therein." Assuming the result of that determination reveals that there is indeed some amount of water that is surplus to such needs, does it make sense, economically or otherwise, to construct such a massive and expensive, and economically and environmentally disruptive, facility for the purpose of exporting that amount of water?

As noted above, whereas prior to the use of such an isolated facility water diverted into the Delta for export from the southern Delta provides some measure of "common" benefits, with an isolated facility any and all such common benefits are eliminated thereby making the deprivation of area of origin needs reasonably foreseeable, if not, clearly inevitable.

v. State and Federal Anti-degradation Laws.

The Federal Environmental Protection Agency ("EPA") requires all states to adopt an "antidegradation policy" similar to the State Water Resources Control Board's ("SWRCB") Resolution 68-16. (40 C.F.R. 131.12.) Resolution 68-16 is further intended to, and does, implement Water Code section 13000 which requires the SWRCB to regulate all "activities and factors which may affect the quality of the waters of the state" such that they "attain the highest water quality which is reasonable."

The State Water Resources Control Board's ("SWRCB") "Resolution 68-16 [commonly referred to as the SWRCB's "Anti-Degradation Policy"] provides in pertinent part:

> "Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies."

This Anti-Degradation Policy is yet another example of a policy which must be duly assessed before the feasibility of any proposed project which proposes to substantially disrupt the current distribution of water throughout the Delta, such as what an isolated facility would do, can be meaningfully determined. It does not take a degree in hydrodynamics to recognize the clear

potential, if not inevitability, of a substantial reduction in water quality in the Delta as the result of a substantial diversion of fresh water inflow into an isolated canal that would otherwise flow into the Delta.

This policy along with all other applicable policies and laws must be duly assessed before any project is deemed feasible and worthy of subjection to the CEQA process as "the project" and, hence, as the "preferred project alternative" course of action which the EIS/EIR process will inevitably be biased towards implementing.

b. **The EIS/EIR's Range of Alternatives Must Also be Comprised of Feasible Alternatives.**

In a similar vein, since Guidelines section 15126.6, subdivision (a), provides that "[a]n EIR *shall* describe a range of reasonable alternatives to the project, or to the location of the project, *which would feasibly attain* most of the basic objectives of the project" (emphasis added), not only does the feasibility of the project itself need to be assessed but so does the feasibility of all of the alternatives in that range. Potential alternatives which include an isolated facility or other unlawful component and, thus, which cannot pass the *legal* feasibility test, cannot not be properly credited for CEQA purposes as being included within the EIS/EIRs mandatory "range" of *feasible* alternatives.

2. **The Instant Notice of Preparation and Scoping Process Are Premature and Legally Inadequate.**

Guidelines section 15082, subdivision (a)(1) provides:

> The notice of preparation shall provide . . . sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include: (A) Description of the project, (B) Location of the project . . . , and (C) Probable environmental effects of the project.

The NOP is inadequate since it does not provide "sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response." Instead, the NOP makes it clear that the project has not even been developed at this stage. For example, the NOP states:

> [DWR] is initiating preparation of a joint [EIS/EIR] for the [BDCP], that will include analysis of improved water conveyance infrastructure and other habitat conservation measures *that will be developed* to advance the goals and objectives of the BDCP.

[¶] The planning effort for the BDCP *is in the preliminary stages of development*, ...

(NOP, p. 1, emphasis added.)

Because the project has not yet been developed the NOP cannot, and does not, sufficiently describe the actual project, the location of the project nor the probable environmental effects of the project as required by Guidelines section 15082.

The NOP states:

> The purpose of the scoping process is to solicit early input from the public and responsible, cooperating and trustee agencies regarding the development of reasonable alternatives and potential environmental impacts to be addressed in the EIR/EIS for the BDCP.

(NOP, p. 1.)

Because neither the project itself, nor its location, are adequately described, meaningful comment on the potential environmental impacts of the project is thwarted. With regard to the development of reasonable alternatives to the project, Guidelines section 15126.6, subdivision (a), provides:

> An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which [1] would feasibly attain most of the basic objectives of the project but [2] would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.

Meaningful comment on proposed alternatives to the project is also substantially thwarted since neither the project's "basic objectives" nor the potentially significant effects of the project have been articulated.

With regard to the project's basic objectives, the NOP states:

> Although the BDCP planning efforts are in the preliminary stages, the collective goals of the [Potentially Regulated Entities] *will provide the basis for* the project objectives under CEQA and the purpose and need statement under NEPA.

(NOP, p. 4, emphasis added.) "[W]ill provide the basis for" suggests that those goals will provide the basis *for the establishment of* the project's basic objectives or, in other words, the project's basic objectives will be derived from those goals. Whatever the case, the NOP does not adequately describe the project's basic objectives which the lead agency will ultimately use to

accept and/or reject proposed alternatives to the project. As a result, meaningful comment on proposed alternatives is thwarted and the lead agency's rejection of any suggested alternatives during this scoping process on the grounds that such alternatives do not have the potential to feasibly attain most of the project's basic objectives would be fundamentally unfair and entirely misplaced. (See Guidelines, § 15126.6, subd. (c) ["The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination"].)

For similar reasons, the mandatory "scoping meeting" required by CEQA, as well as the "Notice of Intent" and "scoping process" requirements of NEPA, are likewise unduly premature and legally inadequate. (See Guidelines, § 15082, subd. (c)(1) and 40 C.F.R. § 1508.22 & 1501.7, respectively.)

3. **Inadequate Identification and Description of the Project's Basic Objectives.**

Since the project's basic objectives play such a critical role in the lead agency's decision of which alternatives should be included in the EIR's detailed analysis of a "reasonable range" of alternatives to the project, as well as the lead agency's ultimate decision of which alternative it should ultimately select to carry out, the lead agency must very clearly identify and describe the precise "basic objectives" of the project. As discussed above, thus far, the lead agency has not done so.

The NOP states on page 4:

> The BDCP is being developed to set out near-term and long-term approaches to meet the objectives of providing for the conservation of covered species and their habitats, addressing the requirements of the federal and State endangered species laws, and improving water supply reliability.

If those three objectives are meant to the be the project's basic objectives, then, once again, the NOP and upcoming EIS/EIR must make it crystal clear that those are the project's basic objectives. While the project's basic objectives must be sufficiently broad to enable a broad range of alternative courses of action to be formulated to meet most of those objectives, the objective of "improving water supply reliability" needs some more specificity to avoid confusion and disputes as to what that objective really means.

For example, improving water supply reliability *for whom*? For water users within the Central Delta Water Agency? For *all* water users using water from the Delta watershed? For just those water users that use that watershed water in areas located *outside* that watershed? For just the so-called "Potentially Regulated Entities" or PREs?

What constitutes an "improvement" of water supply "reliability" in the eyes of the lead

agencies? This objective must ultimately be broad enough to allow for consideration of alternatives that seek to make the water supplies of the Project's export contractors more reliable by providing *non*-Delta watershed water supplies to those contractors in lieu of the inherently unreliable and variable Delta water supplies.

As you are aware, the legal sufficiency of the CALFED Bay-Delta Programmatic EIS/EIR under CEQA is currently under review by the California Supreme Court. One of the central disputes in that case is in fact, "what are the project's basic objectives"? While none of the project's "basic" (or even "secondary") objectives stated that total annual Project exports from the Delta must increase, the lead agency, and other export interests, unfairly argued that any alternative that did not increase such exports was somehow contrary to the project's basic objectives. Such monkey business, for a lack of a better word, with regard to the project's basic objectives should be avoid at all costs in the instant EIS/EIR.

Accordingly, great care should be given to the articulation of the project's basic objectives and the EIS/EIR should clearly articulate what those objectives are and it should use the terminology of "basic objectives" so that it tracks CEQA's language and there is no confusion as to what constitutes the basic objectives of the project.

4. **Proposed Alternatives**.

While as noted above, the suggestion of potential alternatives is substantially thwarted at this stage by the lack of articulation of the project's basic objectives as well as the lack of identification of the potentially significant impacts from the project, not to mention the lack of a meaningful description of the "project" itself, some alternatives concepts which should be consider either as stand alone alternatives or components of various alternatives include the following:

Alternatives which comply with the statutory "common pool" mandate and, thus, do not have any form of an isolated facility, dual or otherwise.

An alternative of "regional self-sufficiency" where Peter (human and environmental water users within the Delta watershed) are not robbed to pay Paul (i.e., export contractors). Instead, every feasible effort is made to the maximum extent possible to develop new non-Delta watershed water and/or make better use of existing non-Delta watershed water to meet the needs of export contractors. The intended result being, that such export contractors can ultimately wean themselves off Delta watershed water, substantially or entirely, such that the Delta watershed water can be used to meet the needs within that watershed.

Ultimately there should be several alternatives which contemplate a *reduction* in exports from the Delta over historical levels.

With regard to the feared apocalyptic collapse of numerous Delta levees from an earthquake. Numerous alternatives should be considered to address such a collapse. To the extent the desire is to avoid the disruption of export deliveries the EIS/EIR should first thoroughly explain as precisely as possible what the water quality will likely be under existing conditions should the Projects desire to continue exporting water during such a apocalyptic failure. Then the EIS/EIR should clearly explain how long that water quality will likely remain in that state assuming the recently adopted emergency preparedness plans are in place, etc. to close those levee breaches. The EIS/EIR should then thoroughly explain whether the Projects can still divert and utilize water of that level of quality for agricultural beneficial uses, urban, etc. in either blended form with water stored in San Luis or blended with other water supplies. Assuming the water cannot be used in its current "degraded" state, the EIS/EIR should explain what facilities could be constructed to desalinize that water, or better allow for the blending of that water will other higher quality supplies, etc., and the costs of the construction and operation of such facilities.

In the event, the Projects simply cannot feasibly use the water in the Delta after an apocalyptic levee failure and/or cannot get by with other supplies while the levees breaks are being repaired, then the fortification of various master levee scenarios should be considered to minimize the intrusion of bay waters in the event of such failures much like what is already being implemented at the present time. So called "polders" should also be considered whereby areas are protected by master levees such that not all levees need to be substantially upgraded. Rather, only "master" levees need to be so upgraded which would serve to protect the polders or various sections of land within the Delta.

Tidal gate structures should also be evaluated to help repel bay salinity in the event of such a massive failure.

The forgoing measures to protect against an apocalyptic levee failure could also serve the additional benefit of protecting the Delta from reasonably anticipated sea level rise.

In addition, with regard to the apocalyptic earthquake, the EIS/EIR's analysis should thoroughly examine the likelihood of such a magnitude earthquake near all of the Project's major export facilities, not the least of which is the export pumping facilities themselves as well as the California Aqueduct and Delta-Mendota canals which essentially track major fault lines. Alternatives to protect against damage and disruption of export supplies resulting from such earthquakes should be thoroughly evaluated.

With regard to protecting fishery resources within the Delta, actual, state of the art, fish screens on all Project export facilities should be evaluated to enable water that is truly surplus from the needs of the Delta, assuming there is any such water, to be exported with minimal impacts to fish. If an actual, state of the art fish screen is included for an isolated facility in any alternative which includes such an isolated facility, then such a screen must naturally also be included in all the alternatives that do not involve an isolated facility and should be installed on

all exiting Project export facilities.

An alternative should be considered that includes substantially increased Delta outflows. Such an alternative could draw sensitive fishery species away from the existing export facilities, thereby increasing the "reliability" of such exports, and also enable the restoration of the Suisun Marsh which could provide tremendous benefits to numerous fishery species.

The EIS/EIR should include an extensive discussion of desalinization options in order to promote regional self-sufficiency. Such a discussion would be in furtherance of Water Code section 12946 which provides:

> It is hereby declared that the people of the state have a primary interest in the development of economical saline water conversion processes which could eliminate the necessity for additional facilities to transport water over long distances, or supplement the services to be provided by such facilities, and provide a direct and easily managed water supply to assist in meeting the future water requirements of the state.

Opportunities for environmentally friendly desalinization of ocean waters as well as brackish ground waters (as well as the saltier Delta waters which presumably will result from a massive levee failure) should be thoroughly examined.

To the extent the objectives of the BDCP are ultimately to "provid[e] for the conservation of covered species and their habitats, address[] the requirements of the federal and State endangered species laws, and improv[e] water supply reliability" (NOP, p. 4), it is easy to see that weaning the export contractors off the Delta watershed such that exports from the Delta could be ultimately substantially reduced would seemingly satisfy those objectives better than any other alternative. Accordingly, as stated above, multiple alternative scenarios which seek to accomplish such weaning should be thoroughly considered.

5. **Impacts Which Should be Analyzed.**

The NOP at page 9 states:

> "The EIR/EIS will analyze the reasonably foreseeable direct, indirect and cumulative effects (e.g. climate change, including sea level rise) of the BDCP (including habitat conservation measures and water conveyance facilities) and a reasonable range of alternatives on a wide range of resources, including but not limited to:
>
> BDCP covered species
> Other Federal and State Listed Species

Aquatic Biological Resources
Wetlands and Terrestrial Habitat
Surface Hydrology including Water Rights
Groundwater Hydrology
Geology and Soils
Water Quality
Seismic Stability
Aesthetics
Air Quality, including Greenhouse Gas Emissions
Land Use (e.g. Urban, Agricultural and Industrial Uses)
Historic and Cultural Resources
Environmental Health and Safety
Public Services and Utilities
Energy and Natural Resources
Recreation
Population/Housing
Transportation/Traffic"

In addition to what was stated above with respect to alternatives, the following effects/topics should also be throughly analyzed:

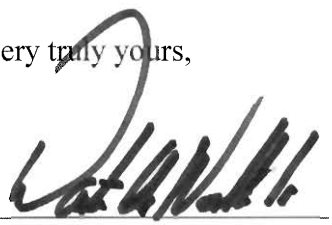
-- Impacts on *all* aquatic and terrestrial species must be examined, not just the BDCP covered species or other "listed" species.
-- Navigation impacts.
-- Impacts on the integrity of existing levees within the Delta from the construction and operation of any isolated facility or other facilities.
-- Seepage impacts on lands within the Delta from the construction and operation of any isolated facility or other facilities.
-- Evaporative water losses from any proposed creation of wetlands.
-- If any increase in exports are contemplated or reasonable foreseeable, then a thorough identification of the source of such exports and examination of the full range of potential environmental impacts from the export of such water must be conducted.
-- Growth-inducing impacts.
-- Economic impacts which have the potential to result in adverse changes to the environment, e.g., the economic impacts from a loss of farmland due to an isolated facility and/or construction of wetlands and the decreased agricultural production within the Delta resulting from any decrease in water quality resulting from the operation of an isolated canal or otherwise. The potential for such economic impacts to result in physical changes to the environment via the abandonment of farming operations or local ability to fund levee maintenance, etc. should be fully examined.

Lastly (for the time being), but certainly not least, the EIS/EIR should thoroughly embrace the ramifications to the environment from the construction and operation of any isolated facility which would eliminate or diminish the Projects and, their water contractors', currently existing direct beneficial interests in preserving the water quality in the Delta. The Delta Protection Act of 1959's mandate that exports from the Delta be taken from the "common pool" within the Delta, and not from the uppermost northern tip of the Delta, has ensured that the state and federal government, as well as the millions of people who receive Delta export water and hundreds of thousands of acres of farmland that utilize such water, have a direct stake in ensuring that the Delta water quality remains fresh. What is good for the goose is good for the gander. The potential environmental impacts from the elimination or diminishment of that direct stake should not be underestimated by any of the participants to the BDCP and the upcoming EIS/EIR should thoroughly discuss, incorporate and acknowledge that potential throughout the entire EIS/EIR and especially in the discussion and evaluation of alternatives to the proposed project (whatever that may ultimately be).

6. **Conclusion.**

Thank you for your time and consideration of these comments and concerns.

Very truly yours,



Dante John Nomellini, Jr.
Attorney for the CDWA

DJR/djr
Enclosures